

REMARKS/ARGUMENTS

The above-identified patent application has been reviewed in light of the Examiner's final Action dated October 28, 2008. No claims have been amended or canceled by this paper. Accordingly, Claims 1-3, 6-14, 16-26 and 28-34 are now pending. As set forth herein, reconsideration and withdrawal of the rejections of the claims are respectfully requested.

Claims 16-19 and 20-25 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. In particular, the Office Action states that Claims 16 and 20 recite an apparatus. However, the Office Action finds that the system would reasonably be interpreted by one of ordinary skill in the art as software per se. Applicants note that Claim 16 is in means plus function form, which requires that the recited "means for" be modified by functional language (MPEP §2818). Moreover, the structure associated with various of the recited means includes hardware components. Therefore, the rejection on the grounds that the recited apparatus fails "to be tangibly embodied or to include any recited hardware as part of the system" makes no sense. In addition, the elements of independent Claim 20 are recited as specific components of an apparatus. As recently clarified by the Federal Circuit, a patent claim recites patentable subject matter under 35 U.S.C. §101 if the claims recite a particular machine or apparatus or transforms any article into a different state or thing. (*In re Bilski*, No. 2007-1130, Slip Op. at p. 23 (Fed. Cir. October 20, 2008).) As the claims subject to the §101 rejection both recite apparatuses, (*i.e.*, a machine) the rejections of these claims as being directed to non-statutory subject matter is improper, and should be reconsidered and withdrawn.

Claims 1-3, 6-7, 13, 16-17, 20-21, 24-26 and 28 stand rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 6,718,330 to Zenner ("Zenner"). In addition, Claims 14, 18 and 22-23 stand rejected under 35 U.S.C. §103 as being unpatentable over Zenner in view of Applicants' admitted prior art, and Claims 8-12, 19 and 29-34 stand rejected under 35 U.S.C. §103 as being unpatentable over Zenner in view of U.S. Patent No. 5,506,898 to Constantini et al. ("Constantini"). In order to establish a *prima facie* case of obviousness under §103, there must be some suggestion or motivation to modify the reference or to combine the reference teachings, there must be a reasonable expectation of

success, and the prior art reference or references must teach or suggest all of the claim limitations. (MPEP §2143.) Moreover, “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ 2d 1329, 1336 (Fed. Cir. 2006); See also, *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. \_\_\_\_\_, 127 S.Ct. 1727, 1741, 82 USPQ 2d 1385, 1396 (U.S. 2007) (quoting statement of *In re Kahn* with approval).) However, the cited references do not disclose the invention as claimed. In particular, the cited references do not disclose calculating a probability of servicing work within a target time by calculating a number of opportunities to service the work within the target time as claimed. Therefore, reconsideration and withdrawal of the rejections of the claims as obvious in view of the cited references are respectfully requested.

The claimed invention is generally directed to a method and system that balances resource loads for a plurality of service locations. More particularly, the claims recite the computation of a relative probability of servicing work requests for each service location included in a plurality of service locations. Work requests are then assigned to a service location based on the determined relative probabilities, allowing work to be efficiently routed. Moreover, the pending claims generally require determining a relative probability by calculating a number of opportunities to service the work request within a target time by each service location included in the plurality of service locations.

The Zenner reference is generally directed to a predictive Internet automatic work distributor and proactive Internet automatic work distributor. The predictive Internet automatic work distributor (Pre-IAWD) assigns work to an agent having the highest likelihood of completing the work first in a group of agents, based on a generated prediction. (Zenner, Abstract.) The prediction algorithm used considers factors such as a current workload of each agent, a priority of the work, and an experience level and skill set of each agent. (*Id.*) With respect to claim elements specifying that the relative probability is determined by calculating a number of opportunities to service a work request within a target time by each service location included in a plurality of service locations, the Office Action admits that Zenner only teaches that work is assigned to the agent having the highest

likelihood of completing the work first in the group of agents. Nonetheless, the Examiner finds that one of ordinary skill in the art would realize that Zenner's teaching of completion time prediction would be analogous to a number of opportunities, since having a lower completion time allows for more opportunities to operate on the work request. (Final Office Action dated October 28, 2008, p. 4, ll. 15-18.)

This grounds for finding a teaching of specific claim elements in the Zenner reference is inadequate and improper. In particular, the claims recite a specific mechanism or procedure by which a probability for servicing work within a target time is calculated: calculating a number of opportunities to service the work request within the target time by each service location. Whether or not a completion time prediction is analogous to a number of opportunities, there is absolutely no teaching, suggestion or disclosure in Zenner of determining a relative probability that a work request will be serviced within a target time by calculating a number of opportunities to service the work request within the target time. Therefore, for at least these reasons, Claims 1-3, 6-7, 13, 16-17, 20-21, 24-26 and 28 are not obvious in view of Zenner, and the rejections of these claims should be reconsidered and withdrawn.

The Office Action cites to Applicants' admitted prior art with respect to aspects of Claims 14, 18 and 22-23. Without necessarily agreeing that the Applicants' admitted prior art can be combined with the Zenner reference and applied to such claim elements, the Applicants' admitted prior art does not make up for all of the deficiencies in the disclosure of the Zenner reference with respect to the pending claims. For example, the Applicants' admitted prior art does not provide a teaching, suggestion or disclosure of determining a relative probability for servicing work within a target time by calculating a number of opportunities to service the work request within the target time. Accordingly, for at least these reasons, the rejections of Claims 14, 18 and 22-23 as obvious should be reconsidered and withdrawn.

Claims 8-12, 19 and 29-34 stand rejected as obvious over Zenner in view of Constantini. As noted above, the Zenner reference does not teach, suggest or describe calculating a probability of servicing work within a target time by calculating a number of opportunities to service the work request within the target time as generally claimed. The


Office Action relies on the Constantini reference for disclosure of an average rate of advance in determining the estimated wait time in a queue. However, this is not a disclosure of calculating a number of opportunities to service work. Moreover, the specific equations recited by at least some of the claims subject to rejection in view of Constantini are not taught, suggested or disclosed by that reference, nor are they disclosed by the Zenner reference. In addition, there is no disclosure in Constantini of a target time or calculating a relative probability for a service location that is determined by calculating a number of opportunities to service a work request within a target time at a service location. Accordingly, combining the Zenner and Constantini references would not provide a teaching of the claimed calculation of a number of opportunities to service a work request within a target time, or the specific equations recited by at least some of the claims. Accordingly, the rejections of Claims 8-12, 19 and 29-34 as obvious should be reconsidered and withdrawn.

Applicants note with appreciation the Examiner's indication that Claims 1, 16, 20 and 26 would be allowable if the subject matter of Claims 8 and 12 were combined into the independent claims. Though Applicants note the Examiner's indication of the potential allowability of these claims, Claims 8 and 12 are subject to rejection. Therefore, indication of allowable subject matter makes no sense. Should the Examiner continue to reject the claims, clarification of the status of these claims is requested.

The application now appearing to be in form for allowance, early notification of same is respectfully requested. The Examiner is invited to contact the undersigned if doing so would be of assistance.

Respectfully submitted,

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